

\$400,000 or \$1 million or whatever, providing, again, it is within or below the limit that is established, which would require programming approval by the Congress; providing it is below that limit, the NID continues to have that authority, which he would have in any event, to transfer funds or positions from one place to another. So we don't touch the money or the positions.

However, we maintain a chain of command. We maintain military careers. These are uniform military careers, and we do not have an outside civilian person changing that career by transferring a uniform military person from one place to another.

I thank my colleagues, the managers of the bill, for working out this language with us. It is a very important change in terms of military careers, in terms of military personnel, in terms of the management of military personnel, in terms of morale. But it does not disturb, again, the budgetary power or the shifting around of budgets—or billets, as we call them—or positions, providing, again, they are underneath and within the limits established by the reprogramming procedures that have been established, where individual agency heads are allowed to transfer money from one place to another. If it is above that limit, it is established by the reprogramming procedures, then, of course, they have to go through the normal reprogramming process before money can be transferred from one place to another.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, the Collins-Lieberman bill grants the national intelligence director the authority to transfer personnel within the national intelligence program to meet higher priorities. This is extremely important authority because we want to make sure the NID can, for example, staff up the National Counterterrorism Center with individuals from a variety of agencies, including military personnel who may be at the Defense Intelligence Agency, for example.

But the compromise that we have reached addresses two important concerns. One, it puts a 3-year limit on the length of time for this personnel. That is important because we don't want to disrupt the military careers of individuals who are temporarily transferred. Second, it makes clear that we are talking about slots, or billets, and not individual members of the military.

In other words, the NID cannot say: I want "Colonel Murkowski" to go to the National Counterterrorism Center. Instead, the NID would say: I want a linguist to go to the National Counterterrorism Center, or describe what the slot may be.

I think this is a good compromise on this issue, and it leaves intact the strong authority of the national intelligence director, while addressing the legitimate concerns raised by Senator LEVIN.

Mr. LIEBERMAN. Madam President, I rise to support this modification of

the amendment. Here, again, we have reasoned together about the significant changes that will come about as a result of the underlying proposal in the creation of an NID. I think it will come out with a result that is fair and will be effective.

As I have said before, our intelligence forces today are like an army without a general. The whole idea of creating an NID is to put somebody in charge. Part of being in charge has to mean the ability to transfer the forces to places where the director thinks they are needed.

Senator LEVIN was understandably concerned about the impact that might have on the military chain of command. In an initial proposal he said these transfers could not occur without the approval of the Secretary of Defense. We thought that would frustrate the authority that we are trying to give to the national intelligence director. So we have come to a very reasonable compromise, which is, as Senator COLLINS and Senator LEVIN said, with regard to uniform military personnel working within the intelligence community. If the NID believes he needs three, four, or five positions from military intelligence, the slots can be moved. But the NID, with regard to uniformed military personnel, cannot go in and say, I want—as Senator COLLINS said—"Colonel Murkowski" to be transferred to the national intelligence center, or some other subdivision of the intelligence community. That is quite reasonable. But it would allow the position, the slot, to be transferred. And then, presumably, for a process of negotiation, it would allow a process of negotiation to go on for the Secretary of Defense or the NID, or their designees, as to who actually filled that slot. With regard to nonuniformed personnel, including military personnel, those within the Department of Defense, they can be transferred by the national intelligence director, acting on his own.

I think this is a very good, balanced compromise. I thank Senator LEVIN for his characteristic thoughtfulness. I even thank him for his persistence, which I think has brought about a good result. I am happy to support this amendment, as modified.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, my thanks to the managers, not just for their work on this amendment, but their work generally on this bill. It has been exemplary and a model to all of us in this Senate as to how we can achieve things on a bipartisan basis. They worked together beautifully, and I commend them for it.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3962 to amendment No. 3809, as modified.

The amendment (No. 3962) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3809, as modified, as amended.

The amendment (No. 3809), as modified, as amended, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDING THE TRADEMARK ACT OF 1946

Ms. COLLINS. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2796 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2796) to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, and privileges as trademarks.

There being no objection, the Senate proceeded to consider the bill.

Ms. COLLINS. Madam President, I ask unanimous consent that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2796) was read the third time and passed, as follows:

S. 2796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTIONS, RIGHTS, AND PRIVILEGES OF SERVICE MARKS, COLLECTIVE MARKS, AND CERTIFICATION MARKS.

The Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) in section 3 (15 U.S.C. 1053) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges"; and

(2) in section 4 (15 U.S.C. 1054) in the first sentence, by striking "protection" and inserting "protections, rights, and privileges".

COPYRIGHT ROYALTY AND DISTRIBUTION REFORM ACT OF 2004

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 744, H.R. 1417.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1417) to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert in lieu thereof the following: (Insert the part printed in italic.)

H.R. 1417

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.]

[This Act may be cited as the "Copyright Royalty and Distribution Reform Act of 2004".]

[SEC. 2. REFERENCE.]

[Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.]

[SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.]

[(a) IN GENERAL.—Chapter 8 is amended to read as follows:

["CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

["Sec.

["801. Copyright Royalty Judges; appointment and functions.

["802. Copyright Royalty Judgeships; staff.

["803. Proceedings of Copyright Royalty Judges.

["804. Institution of proceedings.

["805. General rule for voluntarily negotiated agreements.

["§ 801. Copyright Royalty Judges; appointment and functions

["(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint one of the three as the Chief Copyright Royalty Judge. In making such appointments, the Librarian shall consult with the Register of Copyrights.

["(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

["(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

["(A) To maximize the availability of creative works to the public.

["(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

["(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

["(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

["(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

["(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

["(i) national monetary inflation or deflation; or

["(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

[except that—

["(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

["(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

[The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

["(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 8, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

["(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

["(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

["(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

["(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary

transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

["(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

["(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

["(C) The Copyright Royalty Judges shall make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

["(i) agree to such partial distribution;

["(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B); and

["(iii) file the agreement with the Copyright Royalty Judges.

["(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

["(4) To accept or reject royalty claims filed under section 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

["(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b)(1) and (2).

["(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

["(7)(A) To adopt as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

["(i) the Copyright Royalty Judges shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be; and

["(ii) the Copyright Royalty Judges may decline to adopt the agreement as the basis for statutory terms and rates or as the basis for the distribution of statutory royalty payments, as the case may be, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges find, based on the record before them, that the agreement is not likely to meet the statutory standard for setting the terms and rates, or for distributing the royalty payments, as the case may be.

["(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

["(c) RULINGS.—The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges. The Copyright Royalty Judges may consult with the Register of Copyrights in making any rulings under section 802(f)(1).

["(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

["(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

["§ 802. Copyright Royalty Judgeships; staff

["(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h). In this subsection, 'adjudication' has the meaning given that term in section 551 of title 5, but does not include mediation.

["(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

["(c) TERMS.—The terms of the Copyright Royalty Judges shall each be 6 years, except of the individuals first appointed, the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining Copyright Royalty Judges, one shall be appointed to a term of 2 years, and the other shall be appointed to a term of 4 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

["(d) VACANCIES OR INCAPACITY.—

["(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

["(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

["(e) COMPENSATION.—

["(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL-1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL-2 for administrative law judges pursuant to such section. The com-

pensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

["(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

["(A) the rate of pay of one staff member shall be not more than the basic rate of pay payable for GS-15 of the General Schedule;

["(B) the rate of pay of one staff member shall be not less than the basic rate of pay payable for GS-13 of the General Schedule and not more than the basic rate of pay payable for GS-14 of such Schedule; and

["(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not more than the basic rate of pay payable for GS-11 of such Schedule.

["(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

["(1) IN MAKING DETERMINATIONS.—

["(A) IN GENERAL.—Subject to subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact. Any such consultations between the Copyright Royalty Judges and the Register of Copyrights on any question of law shall be in writing or on the record.

["(B) NOVEL QUESTIONS.—(i) Notwithstanding the provisions of subparagraph (A), in any case in which the Copyright Royalty Judges in a proceeding under this title are presented with a novel question of law concerning an interpretation of those provisions of this title that are the subject of the proceeding, the Copyright Royalty Judges shall request the Register of Copyrights, in writing, to submit a written opinion on the resolution of such novel question. The Register shall submit and make public that opinion within such time period as the Copyright Royalty Judges may prescribe. Any consultations under this subparagraph between the Copyright Royalty Judges and the Register of Copyrights shall be in writing or on the record. The opinion of the Register shall not be binding on the Copyright Royalty Judges, but the Copyright Royalty Judges shall take the opinion of the Register into account in making the judges' determination on the question concerned.

["(ii) In clause (i), a 'novel question of law' is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

["(2) PERFORMANCE APPRAISALS.—

["(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

["(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

["(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties inconsistent with his or her duties and responsibilities as Copyright Royalty Judge.

["(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

["(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

["§ 803. Proceedings of Copyright Royalty Judges

["(a) PROCEEDINGS.—

["(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration royalty panel determinations, rulings by the Librarian of Congress before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, prior determinations of Copyright Royalty Judges under this chapter, and decisions of the court in appeals under this chapter before, on, or after such effective date. Any participant in a proceeding under subsection (b)(2) may submit relevant information and proposals to the Copyright Royalty Judges.

["(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

["(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

["(b) PROCEDURES.—

["(1) INITIATION.—

["(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon the filing of a petition for a rate adjustment or determination under section 804(a) or 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004 or 1007, as the case may be.

["(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright

Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements.

["(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

["(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

["(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of \$150;

["(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

["(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

["(3) VOLUNTARY NEGOTIATION PERIOD.—

["(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

["(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

["(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

["(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

["(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts that the contested amount of the claim is \$10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing in writing of the initial claim, the initial response by any opposing participant, and one additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

["(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

["(5) PAPER PROCEEDINGS IN RATEMAKING PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter to determine royalty rates may decide, sua sponte or upon motion of a participant, to determine issues on the basis of initial filings in writing, initial responses by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the

decision. The procedure under this paragraph—

["(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

["(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

["(6) REGULATIONS.—

["(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

["(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

["(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

["(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be no earlier than four months, and no later than five months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, a participant in a proceeding may, within 15 days after the end of the discovery period specified in clause (iii), file an amended written direct statement based on new information received during the discovery process.

["(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

["(II) In this chapter, the term 'written direct statements' means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

["(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

["(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

["(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, upon written notice, seek discovery of information and materials relevant and material to the proceeding. Any objection to any such discovery request shall be resolved by a motion or request to compel discovery made to the Copy-

right Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2), who may approve the request only if the evidence that would be produced is relevant and material. A Copyright Royalty Judge may refuse a request to compel discovery of evidence that has been found to be relevant and material, only upon good cause shown. For purposes of the preceding sentence, the basis for 'good cause' may only be that—

["(I) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

["(II) the participant seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

["(III) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

["(vi) The rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this title to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

["(vii) The Copyright Royalty Judges may issue subpoenas requiring the production of evidence or witnesses, but only if the evidence requested to be produced or that would be proffered by the witness is relevant and material.

["(viii) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period.

["(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

["(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(vi), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

["(2) REHEARINGS.—

["(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

["(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

["(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing.

["(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

["(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in

effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

["(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

["(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

["(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

["(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges.

["(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be accompanied by the written record, and shall set forth the facts that the Copyright Royalty Judges found relevant to their determination. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

["(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may amend the determination or the regulations issued pursuant to the determination in order to correct any technical errors in the determination or to respond to unforeseen circumstances that preclude the proper effectuation of the determination.

["(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

["(6) PUBLICATION OF DETERMINATION.—The Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

["(d) JUDICIAL REVIEW.—

["(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit,

by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

["(2) EFFECT OF RATES.—

["(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date.

["(B) OTHER CASES.—In cases where rates and terms do not expire on a specified date or have not yet been established, successor or new rates or terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, and the rates and terms previously in effect, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

["(C) OBLIGATION TO MAKE PAYMENTS.—(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from providing the statements of account (and any report of use, to the extent required) and paying the royalties required under the relevant determination or regulations.

["(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal.

["(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

["(e) ADMINISTRATIVE MATTERS.—

["(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

["(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and

the 3 staff members appointed under section 802(b).

["(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs of proceedings under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

["(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

["§ 804. Institution of proceedings

["(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

["(b) TIMING OF PROCEEDINGS.—

["(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

["(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3)(B) or (C), as the case may

be. A petition for adjustment of rates under section 11(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

“(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

“(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

“(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

“(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to sections 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

“(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

“(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

“(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

“(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

“(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

“(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate pro-

ceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3)(B) and (C).

“(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

“(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

“(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

“(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

“(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

“§ 805. General rule for voluntarily negotiated agreements

“(Any rates or terms under this title that—

“(1) are agreed to by participants to a proceeding under section 803(b)(2),

“(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

“(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.”.

“(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code,

is amended by striking the item relating to chapter 8 and inserting the following:

“8. Proceedings by Copyright Royalty Judges 801”.

“(SEC. 4. DEFINITION.

“(Section 101 is amended by inserting after the definition of “copies” the following:

“(A ‘Copyright Royalty Judge’ is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.”.

“(SEC. 5. TECHNICAL AMENDMENTS.

“(a) CABLE RATES.—Section 111(d) is amended—

“(1) in paragraph (2), in the second sentence, by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges.”; and

“(2) in paragraph (4)—

“(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”;

“(B) in subparagraph (B)—

“(i) in the first sentence, by striking “Librarian of Congress shall, upon the recommendation of the Register of Copyrights,” and inserting “Copyright Royalty Judges shall”;

“(ii) in the second sentence, by striking “Librarian determines” and inserting “Copyright Royalty Judges determine”;

“(iii) in the third sentence—

“(I) by striking “Librarian” each place it appears and inserting “Copyright Royalty Judges”;

“(II) by striking “convene a copyright arbitration royalty panel” and inserting “conduct a proceeding”;

“(C) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

“(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

“(1) in paragraph (3)—

“(A) by amending the first sentence to read as follows: “Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (1) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, or such other period as the parties may agree.”; and

“(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

“(2) in paragraph (4)—

“(A) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under paragraphs (2) and (3), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (5), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.”;

“(B) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”;

“(C) in the fourth sentence, by striking “its decision” and inserting “their decision”;

“(D) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

[(3) in paragraph (5), by striking “or decision by the Librarian of Congress” and inserting “, decision by the Librarian of Congress, or determination by the Copyright Royalty Judges”];

[(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

[(5) in paragraph (6)(A), as so redesignated, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”].

[(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

[(1) in paragraph (1)—

[(A) in subparagraph (A)—

[(i) by amending the first sentence to read as follows: “Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services shall cover the 5-year period beginning on January 1 of the year following the second year in which the proceedings are commenced, except where differential transitional periods are provided in section 804(b)(3), or such other period as the parties may agree.”; and

[(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”];

[(B) in subparagraph (B)—

[(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), or such other date as the parties may agree.”; and

[(ii) in the second sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”]; and

[(C) by amending subparagraph (C) to read as follows:

[(“C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”];

[(2) in paragraph (2)—

[(A) in subparagraph (A)—

[(i) by amending the first sentence to read as follows: “Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, except where different transitional periods are provided in section 804(b)(3)(A),

or such other period as the parties may agree.”]; and

[(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”];

[(B) in subparagraph (B)—

[(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period specified in subparagraph (A), or such other period as the parties may agree.”; and

[(ii) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”]; and

[(C) by amending subparagraph (C) to read as follows:

[(“C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”];

[(3) in paragraph (3), by striking “or decision by the Librarian of Congress” and inserting “, decision by the Librarian of Congress, or determination by the Copyright Royalty Judges”]; and

[(4) in paragraph (4), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”].

[(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

[(1) in subparagraph (A)(ii), by striking “(F)” and inserting “(E)”];

[(2) in subparagraph (B)—

[(A) by striking “under this paragraph” and inserting “under this section”]; and

[(B) by striking “subparagraphs (B) through (F)” and inserting “this subparagraph and subparagraphs (B) through (E)”];

[(3) in subparagraph (C)—

[(A) by amending the first sentence to read as follows: “Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by this section shall cover the period beginning with the effective date of such terms and rates, but not earlier than January 1 of the second year following the year in which the petition is filed, and ending on the effective date of successor terms and rates, or such other period as the parties may agree.”; and

[(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”];

[(4) in subparagraph (D)—

[(A) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraphs (B) and (C), the Copyright Royalty Judges shall commence proceedings pursuant to chapter 8

to determine and publish in the Federal Register a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C) or such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.”];

[(B) in the third sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”]; and

[(C) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”];

[(5) in subparagraph (E)—

[(A) in clause (i)—

[(i) in the first sentence, by striking “the Librarian of Congress” and inserting “a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judges”]; and

[(ii) in the second sentence, by striking “(C), (D) or (F) shall be given effect” and inserting “(C) or (D) shall be given effect as to digital phonorecord deliveries”]; and

[(B) in clause (i)(I), by striking “(C), (D) or (F)” each place it appears and inserting “(C) or (D)”]; and

[(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

[(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

[(1) in subsection (b), by amending paragraph (2) to read as follows:

[(“(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.”]; and

[(2) in subsection (c)—

[(A) in the subsection heading, by striking “COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS” and inserting “DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES”]; and

[(B) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges”].

[(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)—

[(i) in the first sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”]; and

[(ii) by striking the second and third sentences;

[(B) in paragraph (2), by striking “the Librarian of Congress” and all that follows through the end of the sentence and inserting “a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judge, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.”; and

[(C) in paragraph (3)—

[(i) in the second sentence—

[(I) by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”]; and

[(II) by striking “paragraph (2).” and inserting “paragraph (2) or (3).”];

[(ii) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”]; and

[(iii) by striking “(3) In” and all that follows through the end of the first sentence and inserting the following:

[(“(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under

section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

“(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.”;

“(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

“(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

“(A) by striking “(b)(2)” and inserting “(b)(2) or (3)”;

“(B) by striking “(b)(3)” and inserting “(b)(4)”;

“(C) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges”;

“(4) in subsection (d), as so redesignated—

“(A) by striking “in the Copyright Office” and inserting “with the Copyright Royalty Judges”;

“(B) by striking “Register of Copyrights” and inserting “Copyright Royalty Judges”;

“(5) in subsection (f), as so redesignated, by striking “(d)” and inserting “(c)”.

“(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

“(1) in paragraph (3), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

“(2) in paragraph (4)—

“(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”;

“(B) by amending subparagraphs (B) and (C) to read as follows:

“(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, subject to any distributions made under section 801(b)(3).”.

“(h) DIGITAL AUDIO RECORDING DEVICES.—

“(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”.

“(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration royalty panel which” and inserting “Copyright Royalty Judges”.

“(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

“(A) in subsection (a), by amending paragraph (1) to read as follows:

“(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.”;

“(B) by amending subsections (b) and (c) to read as follows:

“(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

“(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.”.

“(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

“§ 1010. Determination of certain disputes

“(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

“(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

“(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

“(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

“(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.”.

“(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

“§ 1010. Determination of certain disputes.”.

ISEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

“(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act, except that the Librarian of Congress shall appoint interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

“(b) TRANSITION PROVISIONS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the enactment of this Act under the provisions of title 17, United States Code, amended by this Act, and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted.

“(2) EFFECTIVE PERIODS FOR CERTAIN RATE-MAKING PROCEEDINGS.—Notwithstanding paragraph (1), terms and rates in effect under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title for the period 2003 through 2004, and any rates published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 for the years 2003 through 2004, shall be effective until the first applicable effective date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code, or until such later date as the parties may agree. Any proceeding commenced before the enactment of this Act pursuant to section 114(f)(2) and chapter 8 of

title 17, United States Code, to adjust or determine such rates and terms for periods following 2004 shall be terminated upon the enactment of this Act and shall be null and void.

[(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act before the date of the enactment of this Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.]

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Royalty and Distribution Reform Act of 2004”.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

“CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

“Sec.

“801. Copyright Royalty Judges; appointment and functions.

“802. Copyright Royalty Judgeships; staff.

“803. Proceedings of Copyright Royalty Judges.

“804. Institution of proceedings.

“805. General rule for voluntarily negotiated agreements.

“§801. Copyright Royalty Judges; appointment and functions

“(a) APPOINTMENT.—Upon the recommendation of the Register of Copyrights, the Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge.

“(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

“(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

“(A) To maximize the availability of creative works to the public.

“(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

“(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

“(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

“(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

“(i) national monetary inflation or deflation; or

“(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

“(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary infla-

tion, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

“(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

“(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 8, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

“(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

“(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

“(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

“(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

“(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

“(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

“(C) The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

“(i) agree to such partial distribution;

“(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);

“(iii) file the agreement with the Copyright Royalty Judges; and

“(iv) agree that such funds are available for distribution.

“(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

“(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

“(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

“(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

“(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

“(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be; and

“(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates, or for distributing the royalty payments, as the case may be.

“(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b) (2) or (3) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

“(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

“(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g) at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

“(c) RULINGS.—As provided in section 802(f)(1), the Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

“(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright

Royalty Judges with the necessary administrative services related to proceedings under this chapter.

“(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

“§802. Copyright Royalty Judgeships; staff

“(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

“(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

“(2) DEFINITION.—In this subsection, the term ‘adjudication’ has the meaning given that term in section 551 of title 5, but does not include mediation.

“(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

“(c) TERMS.—The terms of the Copyright Royalty Judges shall each be 6 years, except if the individuals first appointed, the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining Copyright Royalty Judges, one shall be appointed to a term of 2 years, and the other shall be appointed to a term of 4 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

“(d) VACANCIES OR INCAPACITY.—

“(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

“(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

“(e) COMPENSATION.—

“(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL-1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL-2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

“(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

“(A) the rate of pay of one staff member shall be not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule;

“(B) the rate of pay of one staff member shall be not less than the basic rate of pay payable for GS-13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-14 of such Schedule; and

“(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-11 of such Schedule.

“(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

“(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

“(1) IN MAKING DETERMINATIONS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact. A Copyright Royalty Judge or Judges, or by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request a determination of the resolution by the Register of Copyrights on any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such motion requesting a written decision by the Register of Copyrights shall be in writing or on the record, and reasonable provision shall be made for comment by the participants in the proceeding in such a way as to minimize duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges his or her decision within 14 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Register of Copyrights, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

“(B) NOVEL QUESTIONS.—(i) In any case in which a novel question of law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. To the extent practicable, provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register shall transmit his or her decision to the Copyright Royalty Judges within 30 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely transmitted, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

“(ii) In clause (i), a ‘novel question of law’ is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

“(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any

such determination or ruling shall not be binding upon the Register of Copyrights.

“(D) SUA SPONTE REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to subsection 802(f)(1)(D), the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails within reasonable period after receipt of such notification to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

“(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

“(2) PERFORMANCE APPRAISALS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

“(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

“(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

“(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

“(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying

physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

“§803. Proceedings of Copyright Royalty Judges

“(a) PROCEEDINGS.—

“(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations of the Copyright Royalty Tribunal, Librarian of Congress, copyright arbitration royalty panels, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered pursuant to subsection 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

“(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

“(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

“(b) PROCEDURES.—

“(1) INITIATION.—

“(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon the filing of a petition for a rate adjustment or upon a determination made under section 804(a) or as provided under section 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be.

“(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under section 803(b)(3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

“(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

“(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a

proceeding under this chapter, including through the submission of briefs or other information, only if—

“(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of \$150;

“(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

“(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

“(3) VOLUNTARY NEGOTIATION PERIOD.—

“(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

“(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

“(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

“(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

“(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts a claim in the amount of \$10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

“(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

“(5) PAPER PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter may decide, sua sponte or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

“(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

“(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

“(6) REGULATIONS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall

issue regulations to govern proceedings under this chapter.

“(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

“(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

“(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be no earlier than four months, and no later than five months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (ii).

“(ii) (I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

“(II) In this chapter, the term ‘written direct statements’ means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

“(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

“(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

“(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges according to regulations adopted by the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

“(vi) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, upon a written motion to the Copyright Royalty Judges, request of an opposing participant or witness other relevant information and materials if absent the discovery sought the moving party would be prejudiced or the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired. Absent a showing of substantial good cause or demonstration of a likelihood of substantial prejudice, no participant in a proceeding may take more than 3 depositions and propound

more than 10 interrogatories in that proceeding. Absent such a showing, the total number of depositions ordered in such a proceeding shall not exceed 10, and the total number of interrogatories shall not exceed 25 in each proceeding. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

“(I) whether the information sought would serve to protect the integrity of the proceeding, to prevent substantial prejudice to any participant, or to correct a material misrepresentation or omission by any participant;

“(II) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

“(III) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

“(IV) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

“(vii) The rules and practices in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

“(viii) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness in a proceeding to determine royalty rates to appear and give testimony or to produce and permit inspection of documents or tangible things if the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this subparagraph shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact. A Copyright Royalty Judge may not issue a subpoena under this clause to any person who was a participant in a proceeding to determine royalty rates and has negotiated a settlement with respect to those rates.

“(ix) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period and shall take place outside the presence of the Copyright Royalty Judges.

“(x) No evidence, including exhibits, may be submitted in the written direct statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

“(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

“(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(vi), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

“(2) REHEARINGS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion

of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

“(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

“(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing, except as provided under subsection (d)(1).

“(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

“(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

“(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

“(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

“(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

“(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges.

“(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

“(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may, with the approval of the Register of Copyrights, issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

“(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is

published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

“(6) PUBLICATION OF DETERMINATION.—The Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

“(7) LATE PAYMENT.—A determination of Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

“(d) JUDICIAL REVIEW.—

“(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. Any party that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

“(2) EFFECT OF RATES.—

“(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date.

“(B) OTHER CASES.—In cases where rates and terms do not expire on a specified date or have not yet been established, the Copyright Royalty Judges shall determine the dates that successor or new rates or terms shall take effect. Except as otherwise provided in this title, the rates and terms previously in effect, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

“(C) OBLIGATION TO MAKE PAYMENTS.—

“(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from—

“(I) providing the statements of account and any report of use; and

“(II) paying the royalties required under the relevant determination or regulations.

“(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal.

“(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution

of royalty fees and costs, and order the repayment of any excess fees, the payment of any unpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

“(e) ADMINISTRATIVE MATTERS.—

“(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

“(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

“(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

“(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

“§804. Institution of proceedings

“(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

“(b) TIMING OF PROCEEDINGS.—

“(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

“(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in ei-

ther of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3) (B) or (C), as the case may be. A petition for adjustment of rates under section 11(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

“(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

“(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

“(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

“(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

“(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

“(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

“(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

“(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

“(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3) (B) and (C).

“(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

“(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

“(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

“(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

“(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

“§805. General rule for voluntarily negotiated agreements

“Any rates or terms under this title that—

“(1) are agreed to by participants to a proceeding under section 803(b)(3),

“(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

“(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter, shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.”

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

"8. Proceedings by Copyright Royalty Judges 801".

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of "copies" the following:

"A 'Copyright Royalty Judge' is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section."

SEC. 5. TECHNICAL AMENDMENTS.

(a) **CABLE RATES.**—Section 111(d) is amended—

(1) in paragraph (2), in the second sentence, by striking "a copyright arbitration royalty panel" and inserting "the Copyright Royalty Judges"; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking "Librarian of Congress" each place it appears and inserting "Copyright Royalty Judges";

(B) in subparagraph (B)—

(i) in the first sentence, by striking "Librarian of Congress shall, upon the recommendation of the Register of Copyrights," and inserting "Copyright Royalty Judges shall";

(ii) in the second sentence, by striking "Librarian determines" and inserting "Copyright Royalty Judges determine"; and

(iii) in the third sentence—

(I) by striking "Librarian" each place it appears and inserting "Copyright Royalty Judges"; and

(II) by striking "convene a copyright arbitration royalty panel" and inserting "conduct a proceeding"; and

(C) in subparagraph (C), by striking "Librarian of Congress" and inserting "Copyright Royalty Judges".

(b) **EPHEMERAL RECORDINGS.**—Section 112(e) is amended—

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: "Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other periods as the parties may agree."; and

(B) by striking the second sentence;

(C) in the third sentence, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges"; and

(D) in the fourth sentence, by striking "negotiation";

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: "The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.";

(B) by striking "copyright arbitration royalty panel" each subsequent place it appears and inserting "Copyright Royalty Judges";

(C) in the fourth sentence, by striking "its decision" and inserting "their decision";

(D) in the fifth sentence, by striking "negotiated as provided" and inserting "described"; and

(E) in the last sentence, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges";

(3) in paragraph (5), by striking "or decision by the Librarian of Congress" and inserting "decision by the Librarian of Congress, or determination by the Copyright Royalty Judges";

(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

(5) in paragraph (6)(A), as so redesignated, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges".

(c) **SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.**—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: "Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.";

(ii) in the third sentence, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges"; and

(iii) in the fourth sentence, by striking "negotiation";

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: "The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.";

(ii) in the second sentence, by striking "copyright arbitration royalty panel" and inserting "Copyright Royalty Judges"; and

(iii) in the second sentence, by striking "negotiated as provided" and inserting "described"; and

(C) by amending subparagraph (C) to read as follows:

"(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.";

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first paragraph to read as follows: "Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.";

(ii) in the third sentence, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges"; and

(iii) in the fourth sentence, by striking "negotiation";

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: "The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year pe-

riod specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.";

(ii) by striking "copyright arbitration royalty panel" each subsequent place it appears and inserting "Copyright Royalty Judges"; and

(iii) in the last sentence by striking "negotiated as provided" and inserting "described in"; and

(C) by amending subparagraph (C) to read as follows:

"(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.";

(3) in paragraph (3), by striking "or decision by the Librarian of Congress" and inserting "decision by the Librarian of Congress, or determination by the Copyright Royalty Judges"; and

(4) in paragraph (4)—

(A) by striking "Librarian of Congress" each place it appears and inserting "Copyright Royalty Judges"; and

(B) by adding after the first sentence "The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the function of the designated agents that are authorized to collect and distribute royalty fees as such functions exist on the day prior to the effective date of this Act.";

(d) **PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.**—Section 115(c)(3) is amended—

(1) in subparagraph (A)(ii), by striking "(F)" and inserting "(E)";

(2) in subparagraph (B)—

(A) by striking "under this paragraph" and inserting "under this section"; and

(B) by striking "subparagraphs (B) through (F)" and inserting "this subparagraph and subparagraphs (B) through (E)";

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: "Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during periods beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree.";

(B) in the third sentence, by striking "Librarian of Congress" and inserting "Copyright Royalty Judges"; and

(C) in the fourth sentence, by striking "negotiation";

(4) in subparagraph (D)—

(A) by amending the first sentence to read as follows: "The schedule of reasonable rates and terms determined by the Copyright Royalty

Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.”;

(B) in the third sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(C) in the third sentence, by striking “negotiated as provided in subparagraphs (B) and (C)” and inserting “described”;

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Librarian of Congress, Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress”; and

(ii) in the second sentence, by striking “(C), (D) or (F) shall be given effect” and inserting “(C) or (D) shall be given effect as to digital phonorecord deliveries”; and

(B) in clause (ii)(1), by striking “(C), (D) or (F)” each place it appears and inserting “(C) or (D)”; and

(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

(1) in subsection (b), by amending paragraph (2) to read as follows:

“(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.”; and

(2) in subsection (c)—

(A) in the subsection heading, by striking “COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS” and inserting “DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES”; and

(B) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges”.

(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking “Librarian of Congress:” and all that follows through the end of the sentence and inserting “Librarian of Congress, a copyright arbitration royalty panel, or the Copyright Royalty Judges, to the extent that they were accepted by the Librarian of Congress, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.”; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(II) by striking “paragraph (2).” and inserting “paragraph (2) or (3).”;

(ii) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(iii) by striking “(3) In” and all that follows through the end of the first sentence and inserting the following:

“(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the pro-

portionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

“(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.”;

(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

(A) by striking “(b)(2)” and inserting “(b)(2) or (3)”;

(B) by striking “(b)(3)” and inserting “(b)(4)”;

(C) by striking “a copyright arbitration royalty panel under subsection (b)(3)” and inserting “the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress”;

(4) in subsection (d), as so redesignated—

(A) by striking “in the Copyright Office” and inserting “with the Copyright Royalty Judges”; and

(B) by striking “Register of Copyrights shall prescribe” and inserting “Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)”;

(5) in subsection (f), as so redesignated, by striking “(d)” and inserting “(c)”.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”; and

(B) by amending subparagraphs (B) and (C) to read as follows:

“(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.”.

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration royalty panel which” and inserting “Copyright Royalty Judges”.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

(A) in subsection (a), by amending paragraph (1) to read as follows:

“(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.”; and

(B) by amending subsections (b) and (c) to read as follows:

“(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

“(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.”.

(4) DETERMINATION OF CERTAIN DISPUTES.—

(A) Section 1010 is amended to read as follows:

“§ 1010. Determination of certain disputes

“(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

“(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

“(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

“(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

“(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection

(d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.”

(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

“1010. Determination of certain disputes.”.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) **EFFECTIVE DATE.**—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act, except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) **TRANSITION PROVISIONS.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the enactment of this Act under the provisions of title 17, United States Code, amended by this Act, and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For the purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced.

(2) **PENDING PROCEEDINGS.**—Notwithstanding paragraph (1), any proceeding commenced before the enactment of this Act may be terminated by the Librarian of Congress, with the approval of the Copyright Royalty Judges. In such cases, the Copyright Royalty Judges shall initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

(3) **EFFECTIVE PERIODS FOR CERTAIN RATE-MAKING PROCEEDINGS.**—Notwithstanding paragraph (1), terms and rates in effect under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services, eligible non-subscription services, and services exempt under section 114(d)(1)(C)(iv) of such title for the period 2003 through 2004, and any rates published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 for the years 2003 through 2004, shall be effective until the later of the first applicable effective date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code, or until such later date as the parties may agree or the Copyright Royalty Judges may establish. If successor terms and rates have not yet been established by such date, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

(c) **EXISTING APPROPRIATIONS.**—Any funds made available in an appropriations Act before the effective date of this Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.

Mr. HATCH. Mr. President, I am pleased that the Senate is considering the Hatch-Leahy substitute to H.R. 1417, the “Copyright Royalty and Distribution Reform Act of 2004,” which provides a much-needed overhaul of the process by which statutory royalty rates are determined and the manner in which the fees paid pursuant to statutory licenses are distributed to copyright holders.

The extensive reforms made this bill are important to virtual all the participants in the process, and I hope that my colleagues will consent to move this bill without delay.

The measure we are considering today represents a recently-reached compromise which I am hopeful can be enacted without delay.

Because the areas of disagreement with H.R. 1417 were relatively narrow in scope, the Hatch-Leahy substitute to H.R. 1417 retains most of the House-passed bill, but does contain a few important changes that are the product of several months of negotiations and discussions between the Hatch and Leahy offices and various stakeholders. The most significant substantive change involves the scope of available discovery in ratemaking proceedings. The changes to the discovery provisions are self-explanatory, so I will not belabor them here.

This bill responds to widespread dissatisfaction among the participants in the current system involving Copyright Arbitration Royalty Panels—or “CARPs”. I will refrain from going into detail about this highly-technical bill—which many would find about as interesting as watching astroturf grow—and will simply express my firm belief that it addresses many of the legitimate concerns expressed by the stakeholders, the members of the House and Senate Judiciary Committees, and the many others that have provided valuable input and that lent us their expertise during the legislative process. I am content simply to refer my colleagues to the comprehensive and detailed committee report drafted by the House if they desire an explanation of the concerns and problems this legislation addresses.

While we were not able to reach absolute consensus on a few difficult issues, for the most part this legislation reflects broad agreement on the fundamental changes that are required to make the existing CARP process more efficient, logical, and—some would contend—bearable by participants.

In conclusion, I would be remiss if I did not publicly recognize that this legislation is the product of some very hard work by our counterparts in the House. Chairman SENSENBRENNER, Chairman SMITH, and Representative BERMAN deserve much of the credit for building a near consensus on this bill and for moving it through the House. I commend them for their bicameral, bipartisan approach to this legislation and for the hard work put in by their respective staffs.

In particular, I would like to thank Blaine Merritt, David Whitney, and Alec French for their hard work.

I would also like to thank Marybeth Peters, the Register of Copyrights, and David O. Carson, the General Counsel of the Copyright Office, for providing invaluable technical assistance to members in both chambers of Congress on this complicated bill.

I would be equally remiss if I did not recognize the outstanding efforts of some in the Senate, including Senator LEAHY and his staff—in particular Susan Davies, Rich Phillips, and Dan Fine—for their efforts on this bill. I also commend Mary Foden and Dave Jones of my staff for their hard work and their efforts to build a consensus around the bill in the Senate.

With that, I will urge my colleagues to vote for H.R. 1417 with the Hatch-Leahy substitute.

Mr. LEAHY. Mr. President, I am pleased that the Senate is taking up and passing the Copyright Royalty and Distribution Reform Act of 2004. I have been working to reform the copyright royalty arbitration procedures for several years. As early as 2002, I noted in a Judiciary Committee hearing that there was widespread dissatisfaction with the current law.

In particular, we heard the testimony of Frank Schliemann of Onion River Radio of Montpelier, VT. Mr. Schliemann noted that many small webcasters could not afford to take part in CARP proceedings, even though their livelihoods would depend on the outcome. We also heard from Billy Strauss, president of Websound, another small webcaster in Brattleboro, VT. Mr. Strauss noted many of the structural problems that plagued the old CARP procedures. In addition, I have been concerned that the current procedures are often hindered by unreasonable delays, and the outcomes subject to manipulation.

The Copyright Royalty and Distribution Reform Act responds to these concerns. It replaces arbitrators, who serve for only one CARP procedure and are paid by the parties, with full-time administrative judges. As a result, the financial burden of taking part in a CARP procedure is alleviated. In addition, all parties can rest assured that there will be continuity and stability in the resolution of these proceedings. At the same time, this bill preserves the traditional role of the Register of Copyrights. This bill also resolves longstanding disputes over the availability of discovery. Because discovery is available where it is needed, the copyright royalty judges will have the information necessary to render a correct determination but the costs of discovery will be kept to a minimum.

I am pleased to have cosponsored with Senator HATCH the amendment in the nature of a substitute to the House bill. I thank Chairman SENSENBRENNER, Chairman SMITH, and Congressman BERMAN for their leadership in this matter. We believe that in

adopting this version of the House bill, H.R. 1417, we will be able to move to final passage without delay. It is time these important reforms were implemented.

Ms. COLLINS. Madam President, I ask unanimous consent that the amendment that is at the desk be agreed to, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3975) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H. R. 1417), as amended, was read the third time and passed.

ECONOMIC DEVELOPMENT ADMINISTRATION REAUTHORIZATION ACT OF 2004

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 754, S. 1134.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1134) to reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

[SHORT TITLE.—This Act may be cited as the "Economic Development Administration Reauthorization Act of 2003".]

SEC. 2. FINDINGS AND DECLARATIONS.

[Section 2 of the Public Works and Economic Development Act of 1965, as amended ("PWEDA") (42 U.S.C. 3121), is revised to read as follows:

SEC. 2. FINDINGS AND DECLARATIONS.

["(a) FINDINGS.—Congress finds that—

["(1) while the fundamentals for growth in the American economy remain strong, there continue to be areas experiencing chronic high unemployment, underemployment, low per capita incomes, and outmigration as well as areas facing sudden and severe economic dislocations due to structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

["(2) sustained economic growth in our Nation, States, cities and rural areas is pro-

duced by expanding free enterprise through trade and enhanced competitiveness of regions;

["(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging local and regional communities to develop a more competitive and diversified economic base by:

["(A) promoting job creation through increased innovation, productivity, and entrepreneurship; and

["(B) empowering local and regional communities experiencing chronic high unemployment and low per capita income to attract substantially increased private-sector capital investment;

["(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private local, regional, tribal and State organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

["(5) in order to avoid wasteful duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, common measures of success, and simplified and consistent requirements; and

["(6) Federal economic development efforts will be more effective if they are coordinated with, and build upon, the trade, workforce investment, and technology programs of the United States.

["(b) DECLARATIONS.—Congress declares that, in order to promote a strong and growing economy throughout the United States:

["(1) assistance under this Act should be made available to both rural and urban distressed communities;

["(2) local communities should work in partnership with neighboring communities, Indian tribes, the States, and the Federal Government to increase their capacity to develop and implement comprehensive economic development strategies to enhance regional competitiveness in the global economy and support long-term development of regional economies; and

["(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to focus on strengthening entrepreneurship and competitiveness, and to take advantage of the development opportunities afforded by technological innovation and expanding and newly opened global markets."]

SEC. 3. DEFINITIONS.

[Section 3 of PWEDA (42 U.S.C. 3122) is amended as follows:

["(1) Subparagraph (4)(A) of this section is amended by striking subparagraph (i) and redesignating successive subparagraphs (ii) through (vii) as (i) through (vi) and revising subparagraph (iv) as re-designated to read as follows:

["(iv) a city or other political subdivision of a State, including a special purpose unit of State or local government, or a consortium of political subdivisions;"]

["(2) Subparagraph 4(B) is amended by adding at the end thereof a new sentence:

["The requirement under subparagraph (A)(vi) that the nonprofit organization or association is 'acting in cooperation with officials of a political subdivision of a State' does not apply in the case of research, training and technical assistance grants under section 207 that are national or regional in scope."]

["(3) Paragraphs (8), (9) and (10) are amended by re-designating them as paragraphs (9),

(10), and (11) and a new paragraph (8) is added as follows:

["(8) REGIONAL COMMISSIONS.—The term 'Regional Commissions' as used in section 403 of this Act refers to the regional economic development authorities: the Delta Regional Authority (Public Law No. 106-554, sec. 1(a)(4) [div. B, title VI], 114 Stat. 2763A-268) (7 U.S.C. 2009aa et seq.), the Denali Commission (Public Law No. 105-277, div. C, title III, 112 Stat. 2681-637) (42 U.S.C. 3121 note), and the Northern Great Plains Regional Authority (Public Law No. 107-171, 116 Stat. 375) (7 U.S.C. 2009bb et seq.)."]

["(4) A new paragraph (12) is added at the end to read as follows:

["(12) UNIVERSITY CENTER.—The term 'university center' refers to a University Center for Economic Development established pursuant to the authority of section 207(a)(2)(D) of this Act."]

SEC. 4. WORKING WITH NONPROFIT ORGANIZATIONS IN ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

[Section 101 of PWEDA (42 U.S.C. 3131) is amended as follows:

["(1) In subsection (b) strike "and multi-State regional organizations" and insert in lieu thereof "multi-State regional organizations, and nonprofit organizations".

["(2) In subsection (d), strike "adjoining" each time it occurs.

SEC. 5. SUB-GRANTS IN CONNECTION WITH PUBLIC WORKS PROJECTS.

[Section 201 of PWEDA (42 U.S.C. 3141) is amended by adding a new subsection (d) as follows:

["(d) SUB-GRANTS.—

["(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

["(2) Under paragraph (1), a recipient may not redistribute grant funds to a for-profit entity."]

SEC. 6. CLARIFICATION OF GRANTS FOR STATE PLANNING.

[Section 203 of PWEDA (42 U.S.C. 3143) is amended as follows:

["(1) Revise paragraph (1) of subsection (d) to read as follows:

["(1) DEVELOPMENT.—Any State plan developed with assistance under this section shall, to the maximum extent practicable, take into consideration regional economic development strategies."]

["(2) Strike paragraph (3) of subsection (d) in its entirety and re-designate paragraphs (4) and (5) as (3) and (4);

["(3) Revise re-designated paragraph (3) of subsection (d) by striking "and" at the end of subparagraph (C) and re-designating current subparagraph (D) as (E) and adding a new subparagraph (D) to read as follows:

["(D) assist in carrying out state's workforce investment strategy (as outlined in the State plan required under section 112 of the Workforce Investment Act of 1998 (29 U.S.C. 2822)); and";

["(4) Add a new subsection (e) at the end thereof as follows:

["(e) SUB-GRANTS.—

["(1) Subject to paragraph (2), a recipient of a grant under this section may directly expend the grant funds or may redistribute the funds in the form of a sub-grant to other recipients eligible to receive assistance under this section to fund required components of the scope of work approved for the project.

["(2) Under paragraph (1), a recipient may not redistribute grant funds to a for-profit entity."]